

# EXHIBIT A



**Free** (<https://axe.deque.com/plans#deque-Trialaxe-sign-in-link>)

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# Deque Software License Terms – axe DevTools<sup>®</sup> Free Extension

This License Agreement (this “Agreement”) is a CONTRACT between you (“Developer”) and Deque Systems, Inc. (“Deque”) which covers your use of and access to the Service that accompanies this Agreement.

Each time you access the Service and “click through” this Agreement, you are once again agreeing to all its terms. Please read this Agreement carefully before accessing or using the Service. You agree to be bound by the terms of this Agreement if you use or access the Service. If you do not agree to the terms of this Agreement, do not access or use the Service. By accessing or using the Service, or by “clicking through” this Agreement, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND DEQUE WITH RESPECT TO THE SERVICE, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

## Service

### Availability

During the Term of this Agreement, Deque agrees to make a pre-production instance of its web accessibility developer testing browser extension (the “Service”) available to Developer via the Internet or other data transmission system, pursuant to the terms and conditions of this Agreement.

### Right to Access

Deque grants to Developer the non-exclusive, non-transferable right to access and use the Service during the Term solely for the purpose of conducting accessibility testing and submitting, or permitting access to, Developer Test Data (as defined below). Deque reserves to itself all rights in the Service that are not expressly granted by this

Agreement. Developer obtains no right, title or interest in the Service or any of the associated materials, or any right, title or interest to any intellectual property rights in the Service, other than as expressly set forth in this Agreement. Title in, and full ownership of, the Service and any and all materials relating to the Service and supplied to Developer by Deque shall remain in Deque. The Service is the Confidential Information of Deque.

## Restrictions

Developer may not, and may not allow any third party to:

- Decompile, disassemble, decrypt, or reverse engineer the Service or attempt to derive the source code for any part of the Service;
- Encumber any right in the Service in favor of a third party, whether by agreement, operation of law, or otherwise;
- Remove from the Service any product identification or proprietary rights notices;
- Sell, lease, lend, or sublicense the Service to any third party;
- Use the Service for timesharing or service bureau purposes or for any purposes not expressly permitted by this Agreement;
- Modify or create derivative works of the Service;
- Publish or disclose to any third party the results of any benchmark tests or other evaluation run on the Service without the prior written consent of Deque; or
- Otherwise use or copy the Service except as expressly provided herein.

## Developer Responsibilities

Developer shall be solely responsible for providing, maintaining and ensuring its ability to access the Service, including securing Internet access connections. Developer will use commercially reasonable efforts to prevent unauthorized access to or use of the Service.

# Data; Developer Warranties

## Developer Test Data

As consideration for the right to access and use the Service, Developer agrees to upload, and to permit the Service to access and use, Developer Test Data. Developer grants to Deque a perpetual, non-exclusive, non-sub-licensable, non-transferable license to capture, copy, store, transmit, maintain, access and display the Developer Test Data for all internal business purposes and for the development and enhancement of its products and services.

“Developer Test Data” means data, information or material uploaded or routed to the Service, transmitted using the Service or otherwise provided or made available to Deque in any medium by Developer or third parties in connection with use of the Service, together with any derivative works made therefrom, and shall include data, information, or material relating to accessibility testing, results of accessibility test procedures, web site metrics, and related items. Developer Test Data does not include Restricted Data.

## Developer Warranties

Developer warrants and represents that:

- he or she owns all right, title and interest in and to the Developer Test Data, or possesses or will possess all legally valid rights in the Developer Test Data necessary to comply with the terms of this Agreement.
- Developer is solely responsible for the accuracy, quality, integrity, reliability and appropriateness of the Developer Test Data.
- no consent, approval, authorization, permission, ratification or waiver from, notice to, or registration or filing with, any person is required for the execution, delivery and performance of this Agreement by Developer.
- neither the execution and delivery of this Agreement by Developer nor Developer's performance under this Agreement does or will (with or without notice or lapse of time or both) (i) contravene, conflict with or result in a violation of any law or any governmental order to which Developer is subject, or (ii) contravene or conflict with, result in any breach of, or constitute a default under any contract or arrangement to which Developer is a party.

Developer shall indemnify, defend, and hold Deque harmless from any losses incurred by Deque as a result of Developer's breach of this Section.

## Restricted Data

Developer's use of the Service does not require that Deque possess or use Restricted Data. Developer will not make available to Deque any Restricted Data and Developer will prevent Deque from being exposed to any Restricted Data. Notwithstanding anything else in this Agreement or otherwise to the contrary, except with respect to Restricted Data that Deque intentionally misappropriates from Developer, Deque's obligations and liability with respect to Restricted Data will be limited to the ordinary care due information inadvertently received that is not Restricted Data. "Restricted Data" means personal information of, or about, Developer's customers or personnel with respect to which applicable law or a third-party contract provides a remedy for misappropriation or unauthorized disclosure or use. The term includes, but is not limited to, nonpublic personal information (as that term is defined by the Financial Services Modernization Act of 1999), protected health information (as that term is defined by the Health Insurance Portability and Accountability Act of 1996), and information that would give rise to a notice obligation under any state or federal data breach notification law (such as, but not exclusively, California Civil Code § 1798.82) if it were misappropriated.

## DISCLAIMER

THE SERVICE MAY CONTAIN PRE-PRODUCTION RELEASE, AND IS PROVIDED "AS-IS," WITHOUT A WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, DEQUE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. DEQUE PROVIDES THE SERVICE AS-IS, WITH ALL FAULTS, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH DEVELOPER, AND DEQUE MAKES NO WARRANTY WITH RESPECT TO THE SERVICE. WITHOUT LIMITING THE FOREGOING, DEQUE DISCLAIMS ALL WARRANTIES, INCLUDING WARRANTIES AGAINST INTERFERENCE WITH DEVELOPER'S OR ANY THIRD PARTY'S ENJOYMENT OF THE SERVICE, AGAINST INFRINGEMENT, OF FITNESS FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY.

Under no circumstances may Developer use the Service, any related documentation, or any other good, service, or software provided by Deque in connection with any good, service, or software that is to be used for any application where the failure or noncompliance of such good, service, or software is likely to result in personal injury (including, but not limited to, death) or property damage.

The Service operates utilizing the Internet, which is not under the control of Deque and which is inherently insecure. Deque makes no warranties, representations, or guarantees of any kind, express, implied, statutory, or otherwise, oral or written, with respect to the performance or security of the Internet.

## Confidentiality

Each Party, as a Recipient, will do the following things with regard to the Confidential Information of the other Party.

Use commercially reasonable measure to prevent the disclosure of the Confidential Information by Recipient and each of Recipient's employees, agents, and/or professionals to any third-party other than as permitted under this Agreement, provided that such measures shall be at least as stringent as those used by Recipient to protect its most proprietary and sensitive information.

Use, and permit the use of, the Confidential Information only for the purposes of providing, or enjoying the benefit of, the goods, services, and software required by this Agreement to be delivered, including, with respect to Deque, for the purposes described in Section Developer Test Data (the "Purpose").

Disclose the Confidential Information only to such of Recipient's employees, agents, and professionals that have a bona fide need to possess or know the Confidential Information, in the course of accomplishing, or advising Discloser with regard to, the Purpose.

Cause each employee, agent, or professional to whom Recipient discloses the Confidential Information to be bound by an obligation of confidentiality that is at least as rigorous as the obligations contained in this Agreement. Each professional, such as a lawyer or an accountant actually retained by Recipient in a professional-client relationship will be deemed under an adequate obligation of confidentiality for the purposes of this Agreement so long as the law recognizes an obligation of confidence actionable by Recipient under law without a separate contractual obligation.

Return or destroy all written or other tangible copies of Confidential Information in Recipient's possession or direct or indirect control, including all extracts and copies thereof, within a reasonable time after, and in accordance with, Discloser's request, provided that recipient may retain an archival copy subject to the confidentiality obligations herein, and provided, further, that to the extent Confidential Information of Developer is included in Developer Test Data, Deque may retain and use such Confidential Information for the Purpose, in accordance with the license granted in Section Developer Test Data.

## Exceptions to Confidentiality

Nothing in this Agreement will prevent Recipient from disclosing Confidential Information to the extent that:

It is already known by Recipient if:

The Confidential Information is not subject to a previous obligation of Recipient to keep such Confidential Information confidential, and

The Confidential Information was not received in violation of a previous confidentiality obligation of

Recipient or a third party of which Recipient knew or had reason to know;

It is or becomes readily ascertainable by proper means by the public without any breach of a confidentiality obligation of Recipient;

It is received from a third party that is not under an obligation of confidentiality of which Recipient knew or had reason to know;

It was independently developed by Recipient without use of the Confidential Information; or

It is required by law to be disclosed provided that, Recipient provides to Discloser as much notice as is practicable under the circumstances of such requirement prior to disclosure and provides to Discloser, at Discloser's expense, such assistance as Discloser requests in seeking confidential treatment, protective orders, nondisclosure, and/or similar measures.

## Injunctive Relief

Because unauthorized use or disclosure of Confidential Information may result in immediate and irreparable injury to Discloser for which monetary damages may not be adequate, in the event that Recipient or any officer, director, employee, agent, professional, or subcontractor of Recipient uses or discloses Confidential Information or, in Discloser's reasonable opinion, any such person is likely to use or disclose Confidential Information in breach of Recipient's obligations under this Agreement, Discloser will be entitled to seek equitable relief, including temporary and permanent injunctive relief and specific performance. Discloser will also be entitled to recover any pecuniary gain that Recipient realizes from the unauthorized use or disclosure of Discloser's Confidential Information. The rights in this Section Injunctive Relief are in addition to any other rights of Discloser under this Agreement, at law, or in equity.

## Duration of Confidentiality Obligations

The confidentiality obligations under this Agreement will continue after disclosure of each item of Confidential Information for the longer of:

The time during which the Confidential Information remains a trade secret (as that term is defined in the Uniform Trade Secrets Act) of Discloser; or

Five (5) years after Recipient receives the item of Confidential Information.

## Publicity

Neither party will, without the other party's prior written consent in each instance (a) use in advertising, publicity or marketing communications of any kind the name or other trademarks of the other party or any of its affiliates, or any employee of either, or (b) represent, directly or indirectly, that any product or service provided by a party has been approved or endorsed by the other party or any of its affiliates.

## Limitation of Liability

EXCEPT IN THE CASE OF BREACHES OF THE CONFIDENTIALITY PROVISIONS BY DEVELOPER OR MISAPPROPRIATION BY EITHER PARTY OF THE PROPRIETARY RIGHTS OF THE OTHER PARTY, THE LIABILITY OF ONE PARTY TO THE OTHER FOR ANY REASON OR REASONS AND UPON ANY CAUSE OF ACTION OR CAUSES OF ACTION PURSUANT TO THIS AGREEMENT SHALL BE LIMITED TO \$100.

NEITHER PARTY SHALL HAVE LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## Compliance with Laws

As applicable to each party's respective obligations under this Agreement, and notwithstanding anything to the contrary in this Agreement, each party shall comply with and cause each of its employees, agents and subcontractors to comply with, applicable laws, and shall obtain all licenses, permits, permissions and consents which may be required of it by any governmental authority.

## Term

This Agreement shall commence on the date Developer first accesses the Service, and shall be effective for so long as Developer accesses and uses the Service, unless earlier terminated in accordance with this Section (the "Term"). Deque may terminate this Agreement at any time without cause upon thirty (30) days' notice to

Developer. In addition to any other remedy available under this Agreement or otherwise, Deque may terminate this Agreement if Developer breaches any material provision of this Agreement and has not cured the breach within thirty (30) days after receipt of written notice of the breach from Deque.

# General Provisions

## No Software

FOR THE AVOIDANCE OF DOUBT, THIS AGREEMENT IS RESTRICTED TO USE OF AND ACCESS TO A RELEASE OF THE SERVICE. ANY AGREEMENT WITH RESPECT TO THE LICENSING OF SOFTWARE PRODUCTS OR THE USE THEREOF WILL BE UNDER A SOFTWARE LICENSE AGREEMENT SEPARATELY NEGOTIATED AND EXECUTED BY THE PARTIES.

## Amendments

No amendment, change, waiver, or discharge of this Agreement shall be valid unless in a record signed by the party against whom enforcement is sought.

## Force Majeure

If the performance of any part of this Agreement (other than payment of amounts due from Developer) by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, unusually severe weather, riot, fire, judicial or governmental action, labor dispute, act of God, act of terrorism, or any other cause beyond the control of either party, that party shall be excused from performance to the extent that it is prevented, hindered or delayed by such causes.

## Governing Law; Venue

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia (excluding the Uniform Computer Information Transactions Act) without regard to its conflict of law provisions.

## Assignment

Neither party may assign, without the prior written consent of the other party hereto, any of its rights, duties, or obligations under this Agreement to any person whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise.



## Notice

Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has real-time or near-real-time tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service. The addresses for notice for each party are the addresses most recently provided by a party to the other party. Either party may change its address for notice by notice to the other party.

## Successors and Assigns; No Third-Party Beneficiaries

This Agreement is legally binding upon and inures to the benefit of the parties and their permitted successors and assigns. No third party is intended to benefit from, nor may any third party seek to enforce, any of the terms of this Agreement, including, but not limited to, any third party with whom Developer has an employment or separate contractual relationship.

## Relationship of the Parties

Nothing contained in this Agreement shall be deemed to create an association, partnership, joint venture, or relationship of employment, principal and agent or master and servant between the parties, or to grant either party the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of, or on behalf of, the other party.

## Waiver

The failure of a party to enforce any of the provisions of this Agreement, or to exercise any option provided in this Agreement, or to require performance by the other party of any of the provisions in this Agreement, is not a present or future waiver of such provisions and does not affect the validity of this Agreement or the right of the party to enforce each and every provision of this Agreement thereafter. The express waiver (whether one or more times) by a party of any provision, condition or requirement of this Agreement does not constitute a waiver of any future obligation of the other party to comply with such provision, condition or requirement.

## Severability

If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of this Agreement shall remain enforceable.

## Survival

The terms and conditions that by their sense and context are intended to survive termination or expiration hereof shall so survive.

## Entire Agreement

This Agreement constitutes the entire agreement between Deque and Developer with respect to the subject matter of this Agreement and there are no representations, understandings or agreements about the subject matter hereof that are not fully expressed in this Agreement.

## Contact Information

Deque welcomes your comments regarding this privacy statement. If you have questions about this statement or believe that we have not adhered to it, please contact us at:

Deque Systems, Inc. Attention: Deque Privacy 381 Elden Street Ste 2000 Herndon, VA (Virginia) 20170

Last updated: April 4, 2018

## Thanks

Special thanks go to Peter Krantz for allowing us to embed the Fangs code in the axe extension.

## Need Accessibility Help?

Deque is your accessibility company of choice.

Call 703-225-0380 (tel:1-703-225-0380), or Email Us (<https://www.deque.com/company/contact/>).

Customers can contact our support helpdesk (<https://www.deque.com/help-center/>).